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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,067	09/11/2003	Bart De Laender	7001-72	6186
30448	7590	04/12/2006	EXAMINER	
AKERMAN SENTERFITT			WILKENS, JANET MARIE	
P.O. BOX 3188			ART UNIT	
WEST PALM BEACH, FL 33402-3188			PAPER NUMBER	

3637

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/660,067	<b>Applicant(s)</b> LAENDER ET AL.	
	<b>Examiner</b> Janet M. Wilkens	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 64-75, 77 and 78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 64-75, 77 and 78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 64, 68-75 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al. Ausavich teaches a pallet (Fig. 10) comprising: a top support member (3), oval support blocks (1) and a bottom support member (2,2',2"). The blocks can be constructed of thermoplastic polyolefin (polypropylene or polyethylene) and filler, such as wood flour or particles (see column 4, lines 59-64). The composite material is such that nails (4) are insertable therethrough and the blocks include solid portions that allow the nails (4) to be driven therethrough. The blocks each have two flat ends on opposite sides thereof which follow along a longitudinal axis. For claims 64, 68-75 and 77, Ausavich fails to teach specific densities/particle diameters for the materials and/or concentrations of materials used in the blocks. It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the support blocks of Ausavich by using different materials, different combinations of materials having different densities, particle diameters, concentrations of material, etc, depending on the desired need of the person constructing the pallet, e.g. depending on block strength properties desired/required, the materials readily available, personal preferences, etc. It would also have been an obvious consideration

to use different types of wood and plastics, including polyesters, epoxies and vinylesters, for the same reasons stated above.

Claims 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al in view of British patent 832,844. As stated above, Ausavich teaches the limitations of claim 64, including top and bottom support members with support blocks in between. For claim 65, Ausavich fails to specifically teach three rows of three blocks and for claim 67 fails to teach three upper cross supports. The British patent teaches a pallet (Fig. 1) comprised of a top member with top support members (4, upper members) and upper cross support members (4, middle members), three sets of three support blocks (2) and a bottom support member (4, bottom members). First, it would have been obvious to one of ordinary skill in the art at the time of the invention to add three middle support blocks in the pallet of Ausavich, such as is taught by the British patent, to provide additional support to the center portion of the pallet structure. Second, it would have been obvious to add three support planks between the top member and blocks of Ausavich, such as is taught by the British patent, to provide even more support to the top member of the pallet.

Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al in view of Breezer et al (5,351,628). As stated above, Ausavich teaches the limitations of claims 64 and 77, including top and bottom support members with support blocks in between. The support blocks have flat ends on the first and second sides (see Fig. 1). For claim 78, Ausavich fails to specifically teach that the ends of the third and fourth sides are also flat. Breezer teaches a pallet (Fig. 1) having support

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blocks (34,36) with more than six flat sides, including having first, second, third and fourth flat ends. First, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the ends of the support blocks of Ausavich by adding flat portions to its third and fourth sides, such as is taught by Breezer, for aesthetic reasons. Second, it would have been an obvious design consideration to make the blocks various shapes, including a shape with six or more flat sides, such as is taught by Breezer or known in the art, also for aesthetic reasons.

### ***Response to Arguments***

Applicant's arguments filed February 22, 2006 have been fully considered but they are not persuasive.

Addressing the arguments concerning the reference of Ausavich et al: first, the examiner contends that the composite of materials used to make the blocks of Ausavich, i.e. the blocks can be constructed of thermoplastic polyolefin (polypropylene or polyethylene) and filler, such as wood flour or particles (see column 4, lines 59-64), as a whole are "nailable" (as shown in Fig. 11). Second, the blocks contain solid portions into which the nails (4) are driven. The nails would not be able to attach the blocks to the runners if they were inserted into pre-made openings. Furthermore, it is argued that Ausavich teaches all of the limitations presently claimed in claims 64 and 68-77. As stated in the art rejections, it would have been an obvious design consideration to modify the support blocks of Ausavich by using different materials, different combinations of materials having different densities, particle diameters,

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concentrations of material, etc, depending on the desired need of the person constructing the pallet, e.g. depending on block strength properties desired/required, the materials readily available, personal preferences, etc. It would also have been an obvious consideration to use different types of wood and plastics, including polyesters, epoxies and vinylesters, for the same reasons stated above. Note: the materials used (and their concentrations), as discussed in the instant application, can vary widely. This further demonstrates the "design preferences" aspect of material selection in the art. Further note: the references of Holzwerke (British patent 832,844) and Breezer are not being applied in the art rejections above because of their "material compositions".

This is an RCE of applicant's earlier Application No. 10/660,067. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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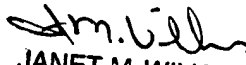
the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens  
April 10, 2006

  
JANET M. WILKENS  
PRIMARY EXAMINER  
Art 3637